

STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF THE ENVIRONMENT

IN THE MATTER OF THE APPLICATION  
OF ROPER CONSTRUCTION, INC. FOR  
AN AIR QUALITY PERMIT NO. 9295,  
ALTO CONCRETE BATCH PLANT

AQB 21-57(P)

**THE PROPERTY OWNERS OF SONTERRA'S NOTICE OF INTENT TO  
PRESENT REBUTTAL TECHNICAL EVIDENCE PURSUANT TO 20.1.4.7 NMAC**

Pursuant to 20.1.4.7 NMAC and the Scheduling Order entered on December 2, 2021, The Property Owners of Sonterra ("Sonterra") submits the following rebuttal technical evidence. This statement is filed by counsel for Sonterra, as identified below. Sonterra opposes the application for an air quality construction permit and submits the following as technical evidence:

1. Carlos Ituarte-Villarreal, Ph.D.

Dr. Ituarte-Villarreal's qualifications have been previously submitted in the Statement of Technical Evidence. The rebuttal testimony of Dr. Ituarte-Villarreal is submitted in opposition to the testimony of Mr. Wade, on behalf of the applicant, and in opposition to the direct testimony submitted by Eric Peters, on behalf of the Environment Department. In particular, Dr. Ituarte-Villarreal's rebuttal testimony contests the conclusions stated by Messrs. Wade and Peters that the "Alto Concrete Batch Plant modeling was performed in accordance with the New Mexico modeling guidelines."

Dr. Ituarte-Villarreal's testimony will be limited to thirty minutes.

**Summary of Opinions**

- A. The modeling was not conducted in conformance with the New Mexico Air Quality Bureau "Air Dispersion Modeling Guidelines" (revised 10/26/2020) and the most up-to-date U.S. EPA guidelines on air quality models.

The Applicant's statement – and the NMED's apparent concurrence – that the modeling was conducted in conformance with New Mexico Air Quality Bureau Air Dispersion Modeling

Guidelines and the most recent U.S. EPA guidelines and air quality models is incorrect. Numerous requirements in both the New Mexico Air Quality Bureau “Air Dispersion Modeling Guidelines” and the U.S. EPA’s guidance on air quality models were not followed. For example, the New Mexico Air Quality Bureau “Air Dispersion Modeling Guidelines” clearly require that the procedures in the latest version of the EPA document, Guideline and Air Quality Models, should be followed when conducting the modeling analysis. U.S. EPA modeling guidelines and 40 C.F.R. 51, App’x W, 8.4.1.b requires that the meteorological data input to AERMOD be adequately representative of the conditions of the locations of the proposed site and that “the meteorological data used as input to a dispersion model should be selected on the basis of a spatial and climatological (temporal) representativeness as well as the ability of the individual parameters selected to characterize the transport and dispersion conditions in the area of concern.” Additionally, the New Mexico Air Quality Bureau “Air Dispersion Modeling Guidelines” provide: “The meteorological data used in the modeling analysis should be representative of the meteorological conditions at the specific site of proposed construction or modification . . .”

The applicant conducted the modeling study for the Alto Concrete Batch Plant by using meteorological data collected at the Holloman Air Force Base meteorological tower. The meteorological station is located 45 miles south/southwest from the proposed Alto Concrete Batch Plant. A review of the existing topographical, meteorological and service conditions surrounding the Air Force Base clearly establishes that the meteorological data are not adequately representative of the dispersion conditions at the location of the proposed site. The reasons for this have been explained in my direct testimony. For all of the above reasons, using the data from the Holloman Air Force Base results in unreliable modeling and contradicts U.S. EPA guidance

and the New Mexico “Air Dispersion Modeling Guidelines.” Accordingly, the permit should not be issued because the modeling’s use of the dispersion analysis is unreliable.

2. Breanna Bernal

Breanna Bernal’s qualifications have been previously submitted in the Statement of Technical Evidence. The rebuttal testimony of Ms. Bernal is submitted in opposition to the testimony of Mr. Wade, on behalf of the applicant, and in opposition to the testimony of the representatives of the New Mexico Environment Department, who assert that the application contains all necessary accurate information and has been deemed complete.

Ms. Bernal’s testimony will be limited to thirty minutes.

**Summary of Opinions**

The applicant has corrected many of the errors and omissions previously pointed out in my direct testimony, which calls into serious question the NMED’s discharge of its oversight functions in this matter. The testimony has corrected the description of the equipment and operation of the concrete batch facility, a description of air pollution control equipment, and the description of the methodology used to determine potential emission rates. However, even at this late stage, the application contains incomplete information, which is set forth below.

- B. The Application still does not identify the basis for a requested permitted capacity of “305 trips per day” for haul road trucks.

Describing the concrete batch plant facility, the applicant states that the equipment is fully listed in the air permit application Tables 2-A, 2-B and 2-C, as well as in Table 3-1. There is no basis offered for the proposal of “305 trips per day” for haul road trucks.

- C. The applicant failed to account for additional moisture to explain additional moisture content supposedly added to the aggregate piles.

The testimony of Mr. Wade indicates that “additional moisture content [will be] added to the aggregate piles,” but this additional moisture content is not identified in Table 2-C or Table 3-1. Accordingly, the application does not account for the additional moisture content assumed by the applicant.

- D. The application does not properly estimate maximum potential emissions during equipment malfunction, start-up, and shut-down, as required by 20.2.72.203 NMAC.

In reviewing Mr. Wade’s testimony, it is unclear where the maximum potential emissions during equipment malfunction, start-up, and shut-down are accounted for in the application. There are no start-up, shut-down, and routine maintenance (SSM) emissions in Section 6. In contrast, page 3 of Section 3 of the application states that, “No SSM emissions are predicted for this permit application.”

3. Eluid Martinez, P.E.

Mr. Martinez’s qualifications have been previously submitted in the Statement of Technical Evidence. The rebuttal testimony of Mr. Martinez is submitted in opposition to the direct testimony of NMED’s witness Deepika Saikrishnan. In particular, Mr. Martinez’s rebuttal testimony contests the conclusion stated by Ms. Saikrishnan that the Air Quality Bureau “does not have the ability to deny any application made for an air quality permit on the basis of non-air quality aspects” and concomitant implication that water issues are “non-air quality aspects.” Mr. Martinez’s rebuttal testimony also addresses the testimony of Mr. Paul Wade, on behalf of the applicant, that additional moisture content will be used to control emissions at Units 3, 4, 5, 6, and 11.



Mr. Martinez's testimony will be limited to thirty minutes.

### **Summary of Opinions**

In this matter, the applicant proposes to control emissions at units 3b, 4b, 5b and 6b with the addition of moisture content – i.e., water. *See* Table 2-C of the Application. Additionally, the applicant proposes to add additional moisture content to the aggregate piles to further control emissions. *See* Direct Testimony of Paul Wade, p. 3:8-10. In Mr. Martinez's opinion, the application itself establishes that the use of water is critical to the operation of the facility, as proposed by applicant, to comply with the applicable air quality regulations and standards.

The applicant has not identified either the amount or source of the water that will be required to address the moisture requirements to control emissions set forth above. Accordingly, consideration at the hearing of other evidence related to water rights, well permits, water sources and water consumption is relevant evidence in order to determine if the applicant can comply with the moisture requirements set forth above.

Where, as here, the applicant proposes to use water as the sole method to control emissions at Units 3, 4, 5, 6, and 11, the water issues summarized in The Property Owners of Sonterra's Notice of Intent to Present Technical Evidence Pursuant to 20.1.4.7 NMAC are relevant evidence to determine if, in fact, the applicant can actually control emissions at these units in the manner proposed by the application.

Ms. Saikrishnan, the NMED's technical witness, claims that the Air Quality Bureau "does not have the ability to deny any application made for an air quality permit on the basis of non-air quality aspects." *See* Air Quality Bureau's Statement of Intent to Present Technical Testimony, NMED, Exhibit 1, p. 15:19-21. Rebecca Roose, Deputy Cabinet Secretary of Administration for the NMED claims that the Secretary of the NMED "does not have the authority under applicable

statute and rules to make a decision on the air permit based on water issues.” *See* 2/1/2022 e-mail from R. Roose to Liz Stefanics, attached as Exhibit 1.

The NMED’s position in this regard is inconsistent with the NMED’s own requirements imposed on the applicant to achieve compliance with the applicable air quality standards. *See* Draft Air Quality Bureau New Source Review Permit, p. A12 of A16, requiring a Wet Dust Suppression System installed for Units 3, 4, 5, and 6 or additional moisture added to the aggregate/sand storage piles (Unit 11) to meet the emissions limitations contained in the permit. *See* Draft Permit, Administrative Record, NMED Index No. 9, 0338-0395. Requiring water suppression systems and/or the addition of additional moisture to control emissions demonstrates that the NMED has the authority to address water issues in the permit process. Based on the above, it appears that the NMED is being improperly selective as to what water issues are to be or not to be addressed in the consideration of approval or denial of this permit.

Further, after Mr. Martinez’s testimony regarding the applicant’s May 7, 2021 receipt of a permit from the Office of the State Engineer to drill a livestock watering well at the location of the facility was filed, the applicant inexplicably requested that the Office of the State Engineer withdraw the permit. On January 24, 2022, at the applicant’s request, Permit H-04700 was withdrawn and cancelled by the Office of the State Engineer. However, the applicant is not precluded from filing a new application in the future for a permit to appropriate groundwater at this location. Accordingly, evidence regarding well sources is still relevant to this proceeding.

4. David Paul Edler

Mr. Edler’s qualifications have been previously submitted in the Statement of Technical Evidence. The rebuttal testimony of Mr. Edler is submitted in opposition to the direct testimony of Paul Wade on behalf of the applicant. In particular, Mr. Edler’s rebuttal testimony contests Mr.

Wade's statements regarding the applicant's proposals to control emissions through additional moisture content and the use of baghouses.

Mr. Edler's testimony will be limited to thirty minutes.

### **Summary of Opinions**

In Mr. Edler's experience, the use of baghouses for loading the cement and fly ash split silo, loading the cement/fly ash batcher, and loading the concrete trucks will not result in the high-efficiency rating suggested by Mr. Wade and in the application.<sup>1</sup> Mr. Wade's testimony fails to take into account the frequent cleaning of the baghouses, which creates significant fugitive dust emissions from the baghouses themselves. Further, cement-dust streaking apparent on silos and on baghouses at all concrete plants evidences the existence of fugitive dust emissions. Moreover, Mr. Wade's testimony also fails to consider the pressurization of the drum of a cement truck, which causes cement dust to escape into the air during loading of the truck.

Mr. Edler also disagrees that additional moisture content added to the aggregate/sand piles will control particulate emissions as stated by Mr. Wade. Even when sprayed, significant dust emissions occur when a loader collects aggregate and/or sand from the piles to load into the feeder hopper. There is not enough water to soak the whole pile; only the top layer is sprayed. Accordingly, when the loader digs into the piles, into the material under the top layer, the moisture in the top layer is not sufficient to control the emissions created by the dry, underneath layers disturbed by the loader. In Mr. Edler's experience, concrete batch plants are located in industrial or remote areas, away from residences, because there are no highly effective methods of containing

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<sup>1</sup> In Mr. Edler's summary of opinions set forth in Sonterra's Statement of Intent to Present Technical Evidence, there is a typographical error on page 15. The last full sentence on that page should read: "As a practical matter, baghouse products do not control virtually all emissions from these pieces of equipment."

fugitive dust emissions, especially from the exposed aggregate and sand piles. This is particularly true in the dry, windy conditions found in the Alto area.

Respectfully submitted,

HINKLE SHANOR LLP

/s/ Thomas M. Hnasko

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*Attorneys for Ranches of Sonterra  
Property Owners Association and  
Don R. and Kathleen Weems*

### **CERTIFICATE OF SERVICE**

I hereby certify that on February 2, 2022, I caused a true and correct copy of the foregoing pleading to be electronically served on the following:

Louis W. Rose

Kristen Burby

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*Attorney for New Mexico Environment  
Department Air Quality Bureau*

/s/ Thomas M. Hnasko

Thomas M. Hnasko



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----- Forwarded message -----

**From:** Liz Stefanics <[lstefanics@msn.com](mailto:lstefanics@msn.com)>

**Date:** Tue, Feb 1, 2022, 19:55

**Subject:** Fw: [EXTERNAL] Fw: NMED Hearing on proposed Alto Concrete Batch Plant

**To:** Barbara Yount <[barbarayount@sbcglobal.net](mailto:barbarayount@sbcglobal.net)>, [chairaltocep@gmail.com](mailto:chairaltocep@gmail.com)  
<[chairaltocep@gmail.com](mailto:chairaltocep@gmail.com)>

See email below. The NMED is only addressing the air quality application.

Thanks,

Liz Stefanics, Senate District 39

PO Box 720, Cerrillos 87010

Cell 505-699-4808

[lstefanics@msn.com](mailto:lstefanics@msn.com)

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**From:** Roose, Rebecca, NMENV <[Rebecca.Roose@state.nm.us](mailto:Rebecca.Roose@state.nm.us)>

**Sent:** Tuesday, February 1, 2022 5:11 PM

**To:** Liz Stefanics <[lstefanics@msn.com](mailto:lstefanics@msn.com)>

**Subject:** RE: [EXTERNAL] Fw: NMED Hearing on proposed Alto Concrete Batch Plant

Hello Chair Stefanics,



I'm now caught up on the status of this matter. NMED concurred with the company's motion to exclude evidence and testimony on water issues because those issues are entirely outside the scope of the hearing on the air quality permit. Water issues, such as water rights, sources and consumption, are not relevant to the proceeding and have no bearing on the final decision. The Secretary will be the final decision-maker on the permit and he does not have the authority under applicable statute and rules to make a decision on the air permit based on water issues.

Please let me know if you have any additional concerns or questions.

Rebecca Roose  
Deputy Cabinet Secretary of Administration  
New Mexico Environment Department  
Mobile: (505) 670-6852  
Pronouns: she/her (*Why is this important?*)  
Science, Innovation, Collaboration, Compliance - #IamNMED

**From:** Liz Stefanics <[lstefanics@msn.com](mailto:lstefanics@msn.com)>  
**Sent:** Tuesday, February 1, 2022 2:23 PM  
**To:** Roose, Rebecca, NMENV <[Rebecca.Roose@state.nm.us](mailto:Rebecca.Roose@state.nm.us)>  
**Subject:** [EXTERNAL] Fw: NMED Hearing on proposed Alto Concrete Batch Plant

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

What is this about? Limiting testimony on water?

Thanks,

Liz Stefanics, Senate District 39  
PO Box 720, Cerrillos 87010  
Cell 505-699-4808  
[lstefanics@msn.com](mailto:lstefanics@msn.com)

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**From:** Barbara Yount <[barbarayount@sbcglobal.net](mailto:barbarayount@sbcglobal.net)>  
**Sent:** Tuesday, February 1, 2022 12:24 PM  
**To:** Liz Stefanics <[lstefanics@msn.com](mailto:lstefanics@msn.com)>  
**Cc:** Mark Severance <[chairaltocep@gmail.com](mailto:chairaltocep@gmail.com)>  
**Subject:** NMED Hearing on proposed Alto Concrete Batch Plant

Liz,

I know you are busy working for us in District 39. Thank you for your support of us seeking to keep a concrete batch plant out of residences in Alto.

Since one of your main issues is WATER and in your position as Chair of the Water and Natural Resources Committee, I thought you would like to know that the NMED is in favor of prohibiting the "opposition" from mentioning the 900 lb gorilla in the room at our upcoming hearing on Feb 9th-11th.

<https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2022/01/2022-01-25-AQB-21-57P-Ropers-Motion-in-Limine-Water-Issues.pdf>

Thank you for your continued support.

Barbara Yount Cathey  
214.499.5081